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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8 FRITZ WUTHRICH,
9 Appellant,
10 v.
11 AMER SPORTS WINTER & OUTDOOR
COMPANY,
12 Appellee.

No. C-14-0871 EMC

**ORDER DENYING
PARTE APPLICAT
DISMISSING APPPE
TO SHOW CAUSE**

(Docket No. 14)

ORDER DENYING APPELLEE'S EX PARTE APPLICATION FOR ORDER DISMISSING APPEAL; AND ORDER TO SHOW CAUSE

15 Previously, the Court denied Appellee Amer Sports Winter & Outdoor Company’s motion to
16 dismiss for lack of prosecution and ordered Appellant Fritz Wuthrich to file his opening brief by
17 January 23, 2015, at 5:00 p.m. *See* Docket No. 11 (order). After Mr. Wuthrich failed to file an
18 opening brief, Amer Sports filed – on January 27, 2015 – the pending application for an order
19 dismissing the appeal. Approximately three hours later, Mr. Wuthrich – or more specifically, his
20 counsel, Ruth Elin Auerbach – filed his opening brief.

21 Amer Sports's application for an order dismissing the appeal is hereby **DENIED**. Although
22 the opening brief was not timely filed, there has been no material prejudice to Amer Sports as the
23 brief was only two court days late.

24 That being said, the Court does not condone the tardiness of the brief, particularly given the
25 history in this case, in which there was a failure to prosecute this case for almost a year.
26 Accordingly, the Court hereby orders Ms. Auerbach to show cause as to why she personally (and not
27 her client, Mr. Wuthrich) should not be sanctioned for her failure to comply with the Court's order,
28 requiring that the opening brief be filed by January 23. At this juncture, potential sanctions include

1 Ms. Auerbach (and not her client, Mr. Wuthrich) having to pay personally the attorney's fees
2 incurred by Amer Sports in filing the pending application for relief. **Ms. Auerbach's response to**
3 **this order to show cause shall be filed no later than February 5, 2015.**

4 **In addition, the Court hereby orders Ms. Auerbach to personally serve a copy of this**
5 **order on her client, Mr. Wuthrich, by February 2, 2015. On the same day, Ms. Auerbach shall**
6 **file a certificate of service, establishing that she served a copy of this order on her client.**

7 **Finally, Ms. Auerbach shall file by February 2, 2015 a certificate of service, establishing**
8 **that she served a copy of the Court's order of January 16, 2015, see Docket No. 11 (order), on**
9 **her client, as the Court previously ordered.**

10 This order disposes of Docket No. 14.
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12 IT IS SO ORDERED.
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14 Dated: January 29, 2015
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EDWARD M. CHEN
United States District Judge